

EX PARTE OR LATE FILED

Frank Stilwell

03-128
5

From: sheila.burns@erm.com
Sent: Wednesday, February 18, 2004 2:28 PM
To: Charlene Vaughn
Cc: Bobeck, Ann; Alan Downer; Andrea Williams; Bambi Kraus; NATHPO; Elizabeth Merritt; Andrea Bruns; Klima, Don (dklima@achp.gov); esanderson@preservation.ri.gov; Frank Stilwell; gsmith@johnstondc.com; Jay Keithley; Clark, John F. - WDC; John Fowler; Javier Marques; Jo Reese; Sheila Burns; schamu@ncshpo.org; Valerie Hauser
Subject: Re: Revised Identification and Evaluation Stipulation from 2/17/04 Teleconference

ORIGINAL



SLB edits FCC-ID
Proposal.217....



FCC-ID
posal.217.doc (36 K)

RECEIVED

FEB 20 2004

Charlene,

Federal Communications Commission
Office of the Secretary

Attached is a copy of the Revised Identification and Evaluation Stipulation with a few edits to the direct effects section.

(See attached file: SLB edits FCC-ID Proposal.217.doc)

Sheila Burns
ERM
300 Chastain Center Blvd. Ste. 375
Kennesaw, Georgia 30144
770 590-8383
770 335-4648 cell
770 590-9164 fax

"Charlene
Vaughn"
schamu@ncshpo.org, Alan Downer
<cvaughn@achp.gov>
<ABobbeck@nab.org>, "Clark, John F. - WDC"
<jay.keithley@pcia.com>, NATHPO
<vhauser@achp.gov>, Andrea Williams
02/17/2004 05:47
<brunsa@pcia.com>, Bambi Kraus
PM
<betsy_merritt@nthp.org>, Frank Stilwell
gsmith@johnstondc.com, Sheila Burns
<jfowler@achp.gov>, "Klima, Don
"Javier Marques" <jmarques@achp.gov>,

To: esanderson@preservation.ri.gov,
<alandowner@navajo.org>, "Bobeck, Ann"
<JFClark@perkinscoie.com>, Jay Keithley
<bambi@nathpo.org>, "Valerie Hauser"
<awilliams@ctia.org>, Andrea Bruns
<bambi@itc.org>, Elizabeth Merritt
<fstilwel@fcc.gov>, Jo Reese <jo@ainw.com>,
<sburns@ermse.com>, "John Fowler"
(dklima@achp.gov) <dklima@achp.gov>,
"Valerie Hauser" <vhauser@achp.gov>
cc:
Subject: Revised Identification and
Teleconference

Evaluation Stipulation from 2/17/04

No. of Copies rec'd
List ABCDE

2

Hello All:

Attached is a revised Stipulation VI that responds to the issues and suggestions raised during today's teleconference. Please review the provisions and forward your comments, recommendations or revisions to me by close of business on Wednesday, February 18th. I'd like to request that you send your comments "reply to all" so that we all have the benefit of knowing which comments and suggestions precipitated further revisions to this section of the draft FCC Nationwide PA.

Also, please provide me with your recommendations regarding Section III., Exclusions No. 4 and 5. We would like to consider your points of view as we finalize our position on this issue and transmit to FCC our recommendations.

If you have any questions regarding the changes that we have made to Stipulation VI, feel free to e-mail me and I will respond as soon as possible.

Thanks for your continued assistance.

Charlene

(See attached file: FCC-ID Proposal.217.doc)

ACHP Revised Language for Section VI of the draft FCC Nationwide PA
February 17, 2004

VI. IDENTIFICATION AND EVALUATION

A. In preparing the Submission Packet for the SHPO/THPO or consulting tribes or NHOs pursuant to Section VII of this Nationwide PA and Attachments 3 and 4, the Applicant shall:

1. define the area of potential effects;
2. identify historic properties listed on or eligible for listing on the National Register of Historic Places within the area of potential effects;
3. evaluate the historic significance of the identified properties, as appropriate; and,
4. assess the effects of the Undertaking on Historic Properties.

B. The Applicant, the SHPO/THPO, and the Commission, as appropriate, shall apply the following standards when preparing or reviewing the Submission Packet:

1. Exclusion of Specific Geographic Areas from Review.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological sites or for visual effects.

2. Area of Potential Effects.

- a. The area of potential effects (APE) is the geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.
- b. The APE for direct effects is defined as the geographic area in which ground disturbance is proposed or there is the potential for a historic property, or any portion thereof, to be destroyed or physically altered by the Undertaking.
- c. The APE for visual effects is defined as the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting or landscape of a historic property.

- d. Applicants shall apply the following guidelines when establishing the APE for visual effects related to undertakings covered by this PA.
 - i. Unless otherwise established through consultation with the SHPO/THPO and consulting tribes or NHOs, the area of potential effect for construction of new facilities is the area from which the tower will be visible:
 - A. within a half mile from the tower site if the tower is 200 feet or less;
 - B. within $\frac{3}{4}$ of a mile from the tower site if the tower between 200 and 400 feet;
or
 - C. within 1 $\frac{1}{2}$ miles when the tower will be over 400 feet.
 - ii. Should the Applicant determine, or the SHPO/THPO or consulting tribes or NHOs recommend an alternate area of potential effect for visual effects, the Applicant and SHPO may:
 - A. Agree to the alternative boundaries; or
 - B. Refer the issue to the Commission or the ACHP for resolution, after making a good faith effort to reach a compromise.

C. Identification and Evaluation of Historic Properties for Visual Effects.

- 1. Applicants shall not be required to conduct any type of historic properties survey when identifying historic properties listed and eligible for listing on the National Register within the area of potential effects for visual effects unless such surveys are deemed appropriate to identify sites of religious and cultural significance to tribes.
- 2. Applicants shall identify historic properties listed on and eligible for listing on the National Register by reviewing the following records, which can be found within the offices of the SHPO:
 - a. properties listed in the National Register;
 - b. properties formally determined eligible by the Keeper for listing in the National Register;
 - c. properties that the SHPO certifies are in the process of being nominated to the National Register;

- d. properties determined eligible as part of a Section 106 consensus determination of eligibility between the SHPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and
 - e. properties within the State inventory previously evaluated for National Register eligibility by the SHPO.
- 3. Applicants, at their discretion, may use the services of Qualified Professionals when identifying historic properties listed and eligible for listing on the National Register.
- 4. The applicant shall provide the SHPO a proposed list of historic properties listed and eligible for listing on the National Register based on the foregoing identification steps in its Submission Packet.
 - a. During the review period outlined in Section VII.A, the SHPO may identify additional properties included in the State inventory and located within the area of potential effects that the SHPO considers eligible for listing on the National Register and such properties shall be added to the list.
 - b. The SHPO may also advise the Applicant that previously identified properties on the list no longer qualify for the National Register and such properties shall be removed from the list.
- 5. Concurrent with the identification of properties with the SHPO and in accordance with Section IV of the PA, the Commission or the Applicant, as appropriate, shall consult with the appropriate Indian tribes or NHOs to identify historic properties of religious and cultural significance within the area of potential effects that meet the National Register criteria of eligibility.

Deleted: 1
The

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Deleted: 1
The S

D. Identification and Evaluation of Historic Properties for Direct Effects

- 1. Applicants shall consider the properties on the list created pursuant to Section VI. C when identifying historic properties listed in or eligible for listing in the National Register, including buildings, structures, and historic districts, within the APE for direct effects.
- 2. An archeological survey of a proposed tower site need not be undertaken when:
 - a. ;

Deleted: The slope of the construction site exceeds 45 degrees

- b. the depth of previous disturbance exceeds the proposed construction depth by at least 2 feet;
- c. geomorphological evidence indicates that cultural resource-bearing soils do not occur or may occur within the project area but at depths that exceed 2 feet below the proposed construction depth; or,
- d. the project site is within an area considered by the SHPO to be "low sensitivity" or have a low potential to contain NR-eligible.
- e. A Qualified Professional has reviewed the project area and determined that it has a low potential to contain intact cultural deposits;

Formatted: Bullets and Numbering

3. A report substantiating the applicant's findings shall be provided to the SHPO/THPO and consulting tribes. If the SHPO or consulting tribes do not object within 15 days to the applicant's findings, the applicant may assume concurrence.

4. Disagreements regarding the applicant's findings shall be referred to the Commission or ACHP for resolution.

5. An archeological survey shall be undertaken if none of the conditions listed in Stipulation VI(D)(2) apply or if the SHPO or tribes so request based on information that supports the increased probability of the presence of intact cultural resources at the project location. The survey shall be conducted in consultation with the SHPO/THPO and consulting tribes or NHOs in the area of potential effects for direct effects. A person or persons meeting the Secretary's professional qualifications standards shall carry out all such surveys.

Deleted: Commission or ACHP

6. The applicant, in consultation with the SHPO/THPO or appropriate tribes or NHOs, shall apply the National Register criteria (36 CFR Part 63) to properties identified within the APE that have not previously been evaluated for National Register eligibility.

E. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue, the applicant may submit the issue to the Commission or refer the matter to the ACHP. The Commission or ACHP shall review the matter in accordance with 36 CFR Part 800.4(c)(2).

**ACHP Revised Language for Section VI of the draft FCC Nationwide PA
February 17, 2004**

VI. IDENTIFICATION AND EVALUATION

A. In preparing the Submission Packet for the SHPO/THPO or consulting tribes or NHOs pursuant to Section VII of this Nationwide PA and Attachments 3 and 4, the Applicant shall:

1. define the area of potential effects;
2. identify historic properties listed on or eligible for listing on the National Register of Historic Places within the area of potential effects;
3. evaluate the historic significance of the identified properties, as appropriate; and,
4. assess the effects of the Undertaking on Historic Properties.

B. The Applicant, the SHPO/THPO, and the Commission, as appropriate, shall apply the following standards when preparing or reviewing the Submission Packet:

1. Exclusion of Specific Geographic Areas from Review.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological sites or for visual effects.

2. Area of Potential Effects.

- a. The area of potential effects (APE) is the geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.
- b. The APE for direct effects is defined as the geographic area in which ground disturbance is proposed or there is the potential for a historic property, or any portion thereof, to be destroyed or physically altered by the Undertaking.
- c. The APE for visual effects is defined as the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting or landscape of a historic property.

- d. Applicants shall apply the following guidelines when establishing the APE for visual effects related to undertakings covered by this PA.
 - i. Unless otherwise established through consultation with the SHPO/THPO and consulting tribes or NHOs, the area of potential effect for construction of new facilities is the area from which the tower will be visible:
 - A. within a half mile from the tower site if the tower is 200 feet or less;
 - B. within $\frac{3}{4}$ of a mile from the tower site if the tower between 200 and 400 feet; or
 - C. within 1 $\frac{1}{2}$ miles when the tower will be over 400 feet.
 - ii. Should the Applicant determine, or the SHPO/THPO or consulting tribes or NHOs recommend an alternate area of potential effect for visual effects, the Applicant and SHPO may:
 - A. Agree to the alternative boundaries; or
 - B. Refer the issue to the Commission or the ACHP for resolution, after making a good faith effort to reach a compromise.

C. Identification and Evaluation of Historic Properties for Visual Effects.

- 1. Applicants shall not be required to conduct any type of historic properties survey when identifying historic properties listed and eligible for listing on the National Register within the area of potential effects for visual effects unless such surveys are deemed appropriate to identify sites of religious and cultural significance to tribes.
- 2. Applicants shall identify historic properties listed on and eligible for listing on the National Register by reviewing the following records, which can be found within the offices of the SHPO:
 - a. properties listed in the National Register;
 - b. properties formally determined eligible by the Keeper for listing in the National Register;
 - c. properties that the SHPO certifies are in the process of being nominated to the National Register;

- d. properties determined eligible as part of a Section 106 consensus determination of eligibility between the SHPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and
 - e. properties within the State inventory previously evaluated for National Register eligibility by the SHPO.
- 3. Applicants, at their discretion, may use the services of Qualified Professionals when identifying historic properties listed and eligible for listing on the National Register.
- 4. 4. The applicant shall provide the SHPO a proposed list of historic properties listed and eligible for listing on the National Register based on the foregoing identification steps in its Submission Packet.
 - a. During the review period outlined in Section VII.A, the SHPO may identify additional properties included in the State inventory and located within the area of potential effects that the SHPO considers eligible for listing on the National Register and such properties shall be added to the list.
 - b. The SHPO may also advise the Applicant that previously identified properties on the list no longer qualify for the National Register and such properties shall be removed from the list.
- 5. Concurrent with the identification of properties with the SHPO and in accordance with Section IV of the PA, the Commission or the Applicant, as appropriate, shall consult with the appropriate Indian tribes or NHOs to identify historic properties of religious and cultural significance within the area of potential effects that meet the National Register criteria of eligibility.

D. Identification and Evaluation of Historic Properties for Direct Effects

- 1. Applicants shall consider the properties on the list created pursuant to Section VI. C when identifying historic properties listed in or eligible for listing in the National Register, including buildings, structures, and historic districts, within the APE for direct effects.
- 2. An archeological survey of a proposed tower site need not be undertaken when:
 - a. The slope of the construction site exceeds 45 degrees;

- b. the depth of previous disturbance exceeds the proposed construction depth by at least 2 feet;
- c. geomorphological evidence indicates that cultural resource-bearing soils do not occur or may occur within the project area but at depths that exceed 2 feet below the proposed construction depth; or,
- d. the project site is within an area considered by the SHPO to be "low sensitivity" or have a low potential to contain NR-eligible.

3. A report substantiating the applicant's findings shall be provided to the SHPO/THPO and consulting tribes. If the SHPO or consulting tribes do not object within 15 days to the applicant's findings, the applicant may assume concurrence.

4. Disagreements regarding the applicant's findings shall be referred to the Commission or ACHP for resolution.

5. An archeological survey shall be undertaken if none of the conditions listed in Stipulation VI(D)(2) apply or if the Commission or ACHP so request. The survey shall be conducted in consultation with the SHPO/THPO and consulting tribes or NHOs in the area of potential effects for direct effects. A person or persons meeting the Secretary's professional qualifications standards shall carry out all such surveys.

6. The applicant, in consultation with the SHPO/THPO or appropriate tribes or NHOs, shall apply the National Register criteria (36 CFR Part 63) to properties identified within the APE that have not previously been evaluated for National Register eligibility.

E. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue, the applicant may submit the issue to the Commission or refer the matter to the ACHP. The Commission or ACHP shall review the matter in accordance with 36 CFR Part 800.4(c)(2).